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IN THE

Supreme Court of the United States

October Term, 1958.

No. 266.

STEPHEN J. KOVRAK,

Appellant,

v.

S. REGEN GINSBURG, Chairman, ROBERT F. LEHMAN, GEORGE P. WILLIAMS, III, Individually and as members of the Committee on Unauthorized Practice of the Law, acting for, on behalf of and by authority of the Philadelphia Bar Association,

Appellees.

On Appeal From the Supreme Court of Pennsylvania, Eastern District.

MOTION TO DISMISS APPEAL.

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MOTION TO DISMISS.

Appellees, pursuant to Rule 16 of the Revised Rules of this Court, move to dismiss the appeal of Stephen J. Kovrak on the grounds that (a) the appeal does not present a substantial federal question and (b) the federal questions sought to be reviewed were not raised in or passed upon by the state courts.

Statement of the Case.

The case under consideration is an appeal from the final order of the Supreme Court of Pennsylvania affirming the decree of the Court of Common Pleas of Philadelphia County, which enjoined the appellant from practicing law, and holding himself out to the public as entitled to practice law in Philadelphia County. The Pennsylvania Supreme Court specifically construed the injunctive decree as prohibiting only the maintenance of an office and the practice of law in Philadelphia County, and as not affecting Appellant's right to practice elsewhere or to try cases in the United States District Court for the Eastern District of Pennsylvania or in any federal court or jurisdiction where he is entitled to practice.

The appellant admitted, by his Answer to the Complaint filed against him that he had engaged in the general practice of law in Philadelphia County, without having become admitted to practice law in any court of record of Pennsylvania. The appellant's sole defense was that he had been admitted to practice in the United States District Court for the Eastern District of Pennsylvania, whose territorial jurisdiction includes Philadelphia.

He gained this status by virtue of the local rules of that court, which deem admitted to practice before it those who are admitted to practice in the United States Supreme Court, and also admits to practice those previously admitted in the Supreme Court of a state. Appellant is admitted to practice in the District of Columbia, the United

States Court of Appeals for the District of Columbia, and the Supreme Court of the United States.

The findings of the court of first instance, the Common Pleas Court No. 6, of Philadelphia County, are that the appellant maintained an office for the practice of law in Philadelphia; that his window carried the words, "Law Offices, Stephen J. Kovrak, Tax Consultant"; that his professional card carried his name, address, telephone number, and the words, "Attorney at law, Proctor in Taxation"; that he held himself out to the public *in Philadelphia County* as entitled to practice law *in that county;* that he was listed as an attorney in the Philadelphia telephone book and also in a legal directory; and that his stationery carried his name, address, telephone number and the words, "Law Offices". In at least two accident cases, he entered into legal negotiations with the Philadelphia Transportation Company; he actually tried an accident case in the federal district court.

Nowhere in the record does it appear that appellant in any way attempted to qualify the scope of his activities as an attorney in Philadelphia County. Rather, the facts clearly show that he held himself out in Philadelphia County as an attorney at law and engaged in that County in the practice of law generally.

In the Common Pleas Court, the appellant took the position that, because he was admitted to practice in the local federal district court, he was entitled to practice law anywhere within the Eastern District of Pennsylvania with regard to any legal matter in which a *federal question* was involved, no matter how remote.

In the Supreme Court of Pennsylvania, the appellant contended [1] that the injunction issued by the Common Pleas Court was illegal as an attempt to prevent him from practicing in the federal court to which he had been admitted. The Pennsylvania Supreme Court construed the injunction

1. See Statement of Questions Involved, Appendix A in Appellant's Jurisdictional Statement, p. 57.

as not restricting the appellant from practicing in any court to which appellant was admitted, and sustained the injunction as prohibiting him from holding himself out in Philadelphia County as entitled to practice law in Philadelphia County. Concededly, appellant never applied for admission nor was he ever admitted to practice law under Pennsylvania law.

I. The Federal Questions Presented Are Not Substantial.

The appellant does not challenge the power of a state to specify requirements for admission to practice law within its jurisdiction. (Jurisdictional Statement, p. 18). In any event, it is clear from the decisions of this Court that the admission of attorneys to practice law is subject to state control. *Bradwell v. Illinois,* 16 Wall. (83 U. S.) 130; *In re Lockwood,* 154 U. S. 116; *Yeiser v. Dysant,* 267 U. S. 540; cf. *Schware v. Board of Examiners,* 353 U. S. 232, 239.

Moreover, appellant does not draw into question the validity of Pennsylvania standards for admission to the bar, since he does not seek to become a member of the Pennsylvania bar.

In these circumstances, it is submitted that appellant's assertion that the law of Pennsylvania sets up an arbitrary and unreasonable classification is without any semblance of legal color.

The gravamen of appellant's case is an asserted conflict between federal and state control. But this asserted conflict is not real in the circumstances of this case.

Although the appellant contends the Pennsylvania statute (Act of April 24, 1933, P. L. 66, Sec. 1, 17 P. S. Sec. 1608) is unconstitutional, in fact that statute is not directly involved. In Pennsylvania, admission to the bar is governed by the Rules of the Pennsylvania Supreme Court. The statute does not purport to establish such rules. Its purpose and effect is to implement the Rules by making it a misdemeanor for anyone to practice law or hold himself

out to the public as being entitled to practice law in any county in Pennsylvania without having first been admitted to practice in a court of record of any county in the Commonwealth in accordance with regularly established rules governing such admissions.

The appellant has not been convicted of violating the statute. Rather, the Common Pleas Court, in the exercise of its equity jurisdiction, has issued an order, tailored to the facts of this case, enjoining the appellant from engaging in the general practice of law in Philadelphia County. Appellant has no quarrel with the statute: his quarrel is with the injunction decree. cf. *Zucht v. King,* 260 U. S. 174.

Appellant's basic contention, that the injunction interferes with his federal rights or privileges, rests solely upon the local rules of United States District Court for the Eastern District of Pennsylvania, which rules he asserts are authorized by the congressional mandate expressed by the Act of September 24, 1789, ch. 20, sec. 35, 28 U. S. C. Sec. 1654. These rules (Appellant's Jurisdictional Statement at pages 7 and 71) provide for the admission in that court of those lawyers who are members of the bar of the United States Supreme Court or of the Supreme Court of any state. Appellant construes 28 USC Sec. 1654 as legislative authorization to the federal judiciary to provide a comprehensive procedure to qualify persons for the practice of "federal law"—whatever the phrase "federal law" may mean.

It is not necessary to determine either the question whether in fact the Congress purported to bestow this power upon the judiciary or whether such power reposes in the judiciary independent of legislative pronouncement, for this Court has stated that the federal courts have not sought to exercise such power but have looked to the courts of the several states to determine the standards and procedures relating to attorney qualifications. *In Re Isserman* 345 U. S. 286. The decisions of various state tribunals in the dual admission cases have reflected the attitude of this

Court in this respect. *N. Y. County Lawyers Association v. Bercu,* 273 App. Div. 524, 78 N. Y. S. 2d 209; *Petition of Kearney,* (Fla.) 63 So. 2d 630; *Chicago Bar Association v. Kellogg,* 401 Ill. 375, 82 N. E. 2d 639; cf. *In re Roel,* 165 N. Y. S. 2d 31, 144 N. E. 2d 24, appeal dismissed 355 US 604.

It is submitted that the decision of the Supreme Court of Pennsylvania is in harmony with the various state court decisions and with *Isserman* as well.

Moreover, the appellant's position presupposes specific interpretations of the injunction and the federal rules which have not been made by the courts involved. It is submitted this Court should not make such interpretations initially in order to *create* an issue within its jurisdiction.

First, the Pennsylvania Supreme Court has construed the injunction so as to prohibit the appellant, in view of his failure to comply with the conditions of admission to practice, from doing that which the state has an unquestioned right to regulate. The Pennsylvania Supreme Court has expressly held that the injunction does not affect appellant's right to appear in the federal courts or any other court to which he is admitted. Although appellant contends that he is enjoined from receiving mail, interviewing witnesses or preparing for trial in the federal court, this is his own interpretation of the decree; no such problem of interpretation was presented to or passed upon in the courts below. It is patent that the Pennsylvania courts did not intend their decree to conflict with appellant's federal privileges.

Second, the appellant attempts to construe the local federal rules so broadly that they would constitute a conduit for transfer of the attorney's license from one state to another in disregard of admission requirements.

It is inexorable logic that if appellant, on the basis of his admission in the United States District Court for the Eastern District of Pennsylvania, may practice law generally anywhere within that court's territorial jurisdiction, his admission to the Court of Appeals for the Third Circuit

entitles him to practice anywhere in Pennsylvania, New Jersey, Delaware and the Virgin Islands; and, indeed, his admission to this Court entitles him to practice law anywhere in the United States.

It is respectfully submitted that no such construction is intended by the federal district courts of their rules. As stated, in the matter of admissions of attorneys, federal courts traditionally follow the state courts. *In re Isserman, supra.* The federal district courts have extended to attorneys the privilege of practicing before them as a part of their practice in the states where they are admitted, not as a means to avoid state qualification. This is evidenced, as in the case of the United States District Court for the Eastern District of Pennsylvania, by a rule which requires local counsel of record in all cases (Appellant's Jurisdictional Statement, page 71).

The significant fact for the purposes of this appeal is that no federal court has construed its admission rules to achieve the result the appellant seeks here. At least one federal court has interpreted its rule, similar to the rule of the District Court for the Eastern District of Pennsylvania, contrary to the appellant's contention, and in accord with the position of appellees. In *Piorkowski v. Arabian American Oil Co.*, 131 F. Supp., 553 (S. D. N. Y., 1955), the district court specifically held that its rule requiring "local" counsel of record meant counsel who maintained an office in the community *pursuant to state law.* That court refused to recognize an "office" which New Jersey attorneys maintained in New York City to receive papers, etc., on the ground that such office was not validly maintained under New York law. This decision plainly follows the federal policy, to support rather than to overcome regulation of the practice of law by the local community in which the federal court sits.

The appellant has not shown even an apparent conflict between the injunctive order and the local federal court rules. If any doubt remains, it is respectfully submitted

that the scope of the privilege granted by the local federal court should be declared by that court initially, and no substantial federal question arises until that court construes its own intimate rule so as to conflict directly with the decree here on appeal.

II. The Questions Sought to Be Reviewed Were Not Raised in or Passed Upon by the Pennsylvania Supreme Court.

The question presented by appellant on this appeal is whether the injunctive decree of the state court validly, under the constitution and laws of the United States, restrains him from (a) maintaining an office and holding himself out in Philadelphia County as an attorney to practice law before the United States District Court for the Eastern District of Pennsylvania and (b) maintaining an office in Philadelphia County where he may be served with notices, rules and pleadings, take testimony and depositions and perform other functions relating to the discharge of his business in the said United States District Court.

However, this is not the question presented to the state courts.

In the Common Pleas Court, the appellant took the position that by virtue of his admission in the federal district court in Philadelphia he was entitled to practice law anywhere within the territorial jurisdiction of that federal court (which includes Philadelphia County) with regard to any legal matter in which a federal question was involved, no matter how remote. (Appellant's Jurisdictional Statement, pages 12, 37-38). The Common Pleas Court regarded this an unrealistic dichotomy, and certainly it seems self evident from the nature of the jurisdiction of federal district courts that admission to practice in them is unrelated to the types of law an attorney may practice. In effect, the appellant proposed to and did engage in the general practice of law in Philadelphia County, and this activity was enjoined.

In the Pennsylvania Supreme Court, the appellant took the position that the injunctive decree abridged his privilege

to transact lawful business in the federal district court located in Philadelphia County. (Appellant's Jurisdictional Statement, pages 14, 59 et seq.). That Court construed the decree to apply only to the practice of law by appellant in Philadelphia County, without affecting his right to practice law in the District of Columbia or to engage in the trial of cases in the federal district courts to which he is admitted.

To the extent appellant seeks to have this Court pass upon his right or privilege to practice law generally in Philadelphia County by virtue of the admission to the United States District Court for the Eastern District of Pennsylvania, he is raising an issue not presented to or passed upon the Supreme Court of Pennsylvania.

To the extent appellant seeks to have this Court pass upon whether the injunctive decree proscribes an office to receive papers, take testimony and depositions and to prepare for the trial of any matter he may have in the local federal court, he is raising an issue concerning the interpretation of the decree not presented to or passed upon by the Supreme Court of Pennsylvania.

Conclusion.

This appeal must be dismissed because it does not present a substantial federal question.

Regulation of the right to practice law within a state is a matter for the state. Appellant has not applied for admission to the bar of Pennsylvania, and accordingly the decree enjoining him from practicing law in Philadelphia County is proper. Appellant attempts to create a federal issue involving supremacy by interpreting both the decree and the rules of the local federal court so that they conflict. His interpretations are not supportable, but in any event it is submitted that this Court should not adopt appellant's construction, in the absence of declarations by the lower court herein involved, in order to create jurisdiction; certainly the meaning of the intimate rules of the local federal court should be declared by it in the first instance.

In any event, the issues presented to this Court were not presented to or passed upon in the Supreme Court of Pennsylvania.

It is respectfully urged in behalf of the appellees from all the foregoing that this appeal be dismissed.

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